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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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Luba Cohen

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EXAMINER

WARE, DEBORAH K

ART UNIT

PAPER NUMBER

1651

MAIL DATE

DELIVERY MODE

09/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/955,933

Applicant(s)

COHEN, LUBA

Examiner

Deborah K. Ware

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5,7-11,13-17 and 19-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7-11,13-17 and 19-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1-2, 5, 7-11, 13-17 and 19-32 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 9, 2007, has been entered.

#### ***Response to Amendment***

The amendment, power of attorney, and extension of time filed July 9, 2007, were received and entered. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-2, 5, 7-11, 13-17 and 19-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over newly cited Sha et al (6280776) in view of previously cited Furhman et al.

Claims are drawn to methods for lowering risk factors and conditions in a patient selected from amongst high blood pressure, high blood glucose, high blood triglycerides, high cholesterol, hypertension, etc. Further, the methods are carried out by administering a licorice extract which is water-insoluble and free from glycyrrhizinic acid.

Sha et al teach methods for lowering risk factors and conditions in a patient selected from amongst high blood pressure, high blood glucose, high blood triglycerides, high cholesterol, hypertension, etc, see abstract. Further, the methods are carried out by administering a licorice extract, note column 4, line 16.

Furhman et al teach administering a licorice extract which is water-insoluble and free from glycyrrhizinic acid. Note page 268, column 1, "Materials" lines 1-2. An ethanol is used to extract the licorice, note page 270, column 2, only paragraph, lines 9-10. The licorice extract is disclosed to have a protective effect against LDL oxidation. The claimed licorice extract and that disclosed by Furhman et al are identical and hence has been admitted by Applicants.

The claims differ from Sha et al in that the licorice extract is not disclosed to be water insoluble and made from ethanol and hence the licorice extract is different, however, the conditions and risk factors treated as claimed are disclosed by Sha et al.

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It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to replace the licorice extract disclosed by Sha et al with that disclosed by Furhman et al because one of skill would have been motivated to minimize LDL oxidation in Sha et al to achieve enhanced expected results of lowering the risk factors and conditions of these problematic diseases associated with LDL oxidation. Each of the newly claimed features and limitations are disclosed by the cited prior art combination and in the absence of persuasive evidence to the contrary the claims are prima facie obvious.

### ***Response to Arguments***

Applicant's arguments filed July 9, 2007, have been fully considered but they are not persuasive. The argument Sha et al teaches away from selecting for water insoluble licorice extract is noted, however, one of skill would have been motivated to select for insoluble licorice extract because Sha et al teach that they use licorice extract in dry forms and to use an insoluble licorice extract one of skill would have been motivated because in this insoluble form the compound would have been expected to have a longer shelf life and also it would have been obvious to try another licorice extract which has already been used by Sha et al for the very same intended use. Also Applicant admits that the licorice extract of Furhman et al is identical to their licorice extract and the results of lowering certain risk factors and treating conditions would have been intrinsic because it is the same extract which is being administered to a patient. No other result would be expected to be obtained other than a successful one.

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As noted by Sha et al all of the conditions and risk factors are already known to be treated with licorice extract. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction

All claims fail to be patentably distinguishable over the state of the art discussed above. Therefore, the claims are properly rejected.


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**DEBORAH K. WARE**  
**PATENT EXAMINER**

Deborah K. Ware  
September 15, 2007